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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/423,066 | 11/01/1999 | STEFAN SCHAFFLER | P99.2243 | 6308 |
| 7590 | 09/07/2004 | | EXAMINER | |
| KEVIN R. SPIVAK MORRISON & FOERSTER LLP 2000 PENNSYLVANIA AVENUE, N.W. WASHINGTON, DC 20006-1888 | | | DUONG, FRANK | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2666 | |

DATE MAILED: 09/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------|---------------------------------------|---------------------------------------|
| Advisory Action | Application No. | Applicant(s) |
| | 09/423,066 Examiner Frank Duong | SCHAFFLER, STEFAN Art Unit 2666 |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 July 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) The period for reply expires 5 months from the mailing date of the final rejection.
- b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. A Notice of Appeal was filed on 06 August 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. The proposed amendment(s) will not be entered because:
 - (a) they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) they raise the issue of new matter (see Note below);
 - (c) they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. Applicant's reply has overcome the following rejection(s): _____.
4. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: 23 and 35.

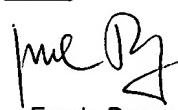
Claim(s) rejected: 20, 21, 24-33 and 36-38.

Claim(s) withdrawn from consideration: _____.

8. The drawing correction filed on _____ is a) approved or b) disapproved by the Examiner.

9. Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.

10. Other: _____.



Frank Duong
Examiner
Art Unit: 2666

Continuation of 2. NOTE: In the Remarks of the outstanding response filed 07/06/04, on page 2, third paragraph and thereafter, Applicants argue "AS discussed in earlier filed amendment, the "target function" in the claimed invention patentably distinguishes over the applied reference-the target function with the bit values to be determined being continuous variables (see, for example, claim 23 bi in f(bi)). Afterwards, L-values are determined by global minimization of the target function (e.g. by deviations). Accordingly, the feature "approximating a dependability degree for forming a digital signal value from the electrical signal based on said optimized target function" is not disclosed by Barbulescu. The original specification clearly defines this limitation, for example, in the fourth, fifth and ninth paragraphs after "object of the present invention". In response Examiner respectfully disagrees and asserts, in the present condition, the claimed invention is still anticipated by Barbulescu for the following rationales. First, the Applicants' argument and the argument supported facts are based on the limitation from the objected claim 23. As clearly pointed out in the Office Action dated 02/06/04 (refer to page 3 of the noted Office Action). Second, the claims are not drafted in a means plus function; thus, they're subjected to examiner's broadest reasonable interpretation of the applied reference, consisting with the specification. In addition, a careful review of the specification, noted by the Applicants in the Remarks, Examiner find no definition for the disputed limitation. As a final note, the response does not place the application in a favorable condition for allowance nor better form for appeal by materially reducing or simplifying the issues for appeal..


FRANK DUONG
PRIMARY EXAMINER